

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2859/91

New Delhi this the 21st Day of April, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Pramila Devi
Wd/o Late Shri Janeswar Mistri
R/o RZ-256/292, Gali No.4
Geetanjali Park,
West Sagarpur,
New Delhi.Applicant

(By Advocate : Shri V.C. Sondhi)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Labour,
Shram Sakthi Bhavan,
Rafi Marg,
New Delhi.
2. The Protector of Emigrants,
Government of India
Jaisalmar House, Mansingh Road,
New Delhi.Respondents

(By Advocate : None)

JUDGEMENT

(By Hon'ble Shri B.K. Singh, Member (A))

This application No.2859/91 has been filed by Mrs Promila Devi against Union of India, through the Secretary, Ministry of Labour, Shramshakti Bhavan, New Delhi, and Protector of Emigrants, Government of India, Jaisalmar House, New Delhi is directed against the following orders :

- (i) Appointment letter No.POED/1/(4)/89 of Protector of Emigrants Delhi dated 26.5.89.



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(ii) Termination of services with effect from 23.7.1990 (25.7.1990) on verbal order, since then the applicant is not allowed to do the duties.

The admitted facts are that the applicant was engaged as Water-woman with effect from 15.5.89. She worked in this capacity till 15.10.89. From 16.10.89 she was engaged as casual labour for a period of three months till 15.01.90 against the vacancy arising as a result of the suspension of a peon named Shri Bhim Singh. She was again engaged as casual worker against another vacancy arising from suspension of record sorter Shri Jagdish Prasad. It would thus be seen that she was engaged as the casual labour only w.e.f. 15.5.89 to 15.1.90; and from 25.4.90 to 24.7.90. No further extension was granted beyond 24.7.90.

The relief prayed for is that the termination order be quashed and applicant be taken back in service and regularised.

On notice the respondents filed the reply and contested the application and grant of relief prayed for. We heard the learned counsel Shri V.C. Sodhi for the applicant and none appeared for the respondents. The main plank of the arguments of Mr. Sodhi was that the lady was duly appointed as water-woman on 26.5.89 vide Appointment letter No.POEO(D)/1(4)/89 Government

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of India, Protector of Emigrants, Delhi, Jasalmer House, New Delhi. The appointment letter itself shows that she was appointed on daily wage basis as water-woman for a limited period. Sri Sodhu argued that the applicant worked for 465 days and that her services were arbitrarily terminated and that no notice was served on her before terminating the services and that the principles of natural justice were not observed in this case. The other ground was that she is a poor woman with children and deserves sympathetic consideration. It was further argued that another person has been appointed after termination of the services of the applicant.

In the counter reply the respondents have given the period of engagement for 1989 and 1990. They have categorically stated that the woman worked for 158 days in all in 1989, firstly as a seasonal water-woman and subsequently in the leave vacancy caused on account of the suspension of Shri Bhim Singh. She was further engaged for a short while in 1990 in the vacancy arising as a result of the suspension of the Record-sorter Shri Jagdish Prasad. She worked for only 75 days in 1990.

In the counter reply it has been further stated that the casual workers are engaged for work of casual or seasonal or intermittent nature and that there is no regular work available for such employees. They are paid from the

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contingency fund and they are not borne on the regular establishment of the department. Thus they are engaged when the work is there and disengaged when there is no work for them. The services are liable to be terminated when there is no work or when the work is completed.

The applicant has filed a rejoinder also reiterating the same facts as contained in the Original Application.

After hearing the learned counsel for the applicant we are not persuaded by his arguments that she has been arbitrarily terminated. The terms of the appointment are clear. She was first appointed as water-woman and then accommodated as Casual worker for short spells in vacancies caused due to the suspension of S/Shri Bhim Singh and Jagdish Prasad and after that her services were not required and were naturally terminated. The period according to them is not 465 days of work as alleged by the learned counsel for the applicant. It is only for 158 days in 1989 and 75 days in all in 1990 and total comes to 233 days. They have categorically denied that some other person was appointed after the termination of service of the applicant.

After hearing contentions of the learned counsel for the applicant it may be stated that every termination of service is not a dismissal or removal. A termination of service brought

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about by the exercise of a contractual right is not per se dismissal or removal as has been held by the Hon'ble Supreme Court in case of Satish Chander Anand Vs Union of India (Supra). Likewise the termination of service in terms of a specific rule regulating terms and conditions of service is not tantamount to infliction of punishment and does not attract Article 311 (2) of the Constitution and as such no need arises for show cause or for observance of principles of natural justice in such cases. In the instant case, termination of service does not carry with it any stigma and there are no penal consequences involved and it is not by way of punishment but is founded on the terms and conditions of the employment of service and the termination is based on the admitted fact that there is no work for applicant. The Tribunal is not competent to issue any direction to engage a person employed on Muster Roll or employed on daily wage basis or appointed as a stop-gap arrangement in leave vacancies to be re-engaged when there is categorical averment to the fact that respondents have no work. The Government is competent to make appointment and stipulate certain terms and conditions and if the action to terminate is taken under the terms and conditions of service they are fully competent to do so under the terms of contract of employment or a specific rule provided a right exists and that right is exercised under the contract. There is no arbitrariness involved particularly when the

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respondents have categorically stated in the counter reply that no person has been appointed in her place. In case of Shreenivas Ganesh Vs Union of India; AIR 1956 Bombay 455, it has been clearly held that if the termination of service is founded on the right flowing from the contract or from the terms of appointment, it is not a punishment and carries with it no evil consequences and as such Article 311 (2) is not attracted and the motive operative on the mind of appointing authority is immaterial. No vested right is created in favour of the applicant and no interference is called for. The application is devoid of any merit or substance and is dismissed leaving the parties to bear their own costs.


(A.K. Singh))

Member (J)



(J.P. Sharma)

Member (A)

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